MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022 / 2023 (TERM ID 2210)

UCY 4612 – CONVEYANCING PRACTICE

(All Sections / Groups)

8 FEBRUARY 2023
Reading Time : 9.00 a.m. – 9:15 a.m.
(15 Minutes)
Answering Time: 9:15 a.m. – 12:15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 5 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the mark for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Legal Profession Act 1976; (ii) National Land Code (Revised 2020) ; (iii) Housing Development (Control & Licensing) Act 1966 (together with Rules and Regulations incorporating latest amendments); (iv) Strata Titles Act 1985, Rules & Order/Strata Titles (Amendment) Act 2013; and (v) Strata Management Act 2013 & Regulations into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Tuan Pang Jr. is a registered proprietor of oil palm estate in Melaka ("the said Land"). The said Land is held under an Individual Title with total area of 150 acres. He passed away intestate last month. Mr. Gold, the eldest son of Tuan Pang Jr. approached Mr. Silver, who wishes to purchase the said Land at RM55 million only.

Mr. Gold and Mr. Silver have agreed to appoint your law firm to act for them in this sale and purchase transaction. Both parties are now at your office. Mr. Silver wants to deposit the sum of RM10 million only in cash with your law firm, namely Messrs ABC & Partners as stakeholders, as a sign of good faith and the remaining balance to be paid by obtaining the loan facility from the licensed financial institution via *Bai Bithaman Ajil* Islamic financing transaction. Messrs ABC & Partners has been appointed by the parties herein to act as stakeholders in this sale and purchase transaction.

Meanwhile, Ms. Bronze, one of the senior conveyancing clerks from your law firm informed Mr. Silver he needs to pay the total *ad valorem* stamp duty for this sale and purchase transaction to be paid by him is RM1 million only. Ms. Bronze has also given the quotation for this sale and purchase transaction to Mr. Silver. Mr. Silver was shocked when he saw the total professional fees need to be paid and as such, he requested for discount, but Ms. Bronze said the law firm is bound by the 'no discount rule' set by Malaysian Bar Council.

Both Mr. Gold and Mr. Silver would like to execute the Sale and Purchase Agreement next month. Ms. Bronze has conducted all the mandatory searches and found no issues. Meanwhile, the said Land is still registered in the name of Tuan Pang Jr. Subsequently, Ms. Bronze discovered that there is a Registrar's caveat on the said Land that had been lodged seven years ago. However, Ms. Bronze advised Mr. Silver that the caveat will not restrict the presentation of the Memorandum of Transfer in favour of him as all caveats will lapse after the duration of six years.

A few days prior to the execution of the Sale and Purchase Agreement, one Ms. Cat came to your law firm and claims to be acting under an irrevocable Power of Attorney granted by Tuan Pang Jr., including the power to receive all the proceeds from the disposal of the properties. She claims that she will sign the sale and purchase agreement and other incidental documents on behalf of Mr. Gold. While you are busy preparing the sale and purchase agreement and other incidental agreements, Mr. Silver also contacted you that he needs to attend a business meeting in the Philippines for a month and requested you send the documents to him in the Philippines for execution via 'Zoom' and you agreed to do so.

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Based on the above facts, analyse the duties, legal rights, responsibilities, and liabilities of all the parties, including but not limited to Messrs ABC & Partners (including yourself as the solicitor in this sale and purchase transaction and Ms. Bronze), Mr. Gold, Mr. Silver and Ms. Cat in this sale and purchase transaction. Your answer must base on the Bar Council's Conveyancing Practice Rulings and Checklist, the relevant statutory provisions, and the case law.

(Total: 25 marks)

QUESTION 2

Heng Ong Huat Sdn. Bhd. (Company No. 12345-A) ('HOHSB'), a private limited company incorporated in Malaysia under the Companies Act 2016 is a well-known property developer in Melaka. Recently, HOHSB launched a housing project known as THREE RESIDENCES CONDOMINIUM Phase 2. Phase 1 of this housing project has been completed in 2021.

Ms. Money, an expatriate who lived in Kuala Lumpur for more than ten years saw an advertisement selling condominium units at the minimum purchase price of RM1,500,000-00 each. She went to HOHSB's sales office and was interested to purchase a unit of high-rise condominium known as Parcel No. B-8-8, within Level No. 8 of Building No. Block B measuring approximately 1,600 square feet in area and bearing postal address Unit B-8-8, Three Residences Condominium, Jalan Berjaya, 55100 Kuala Lumpur together with two units of car park erected over land held under leasehold Master Title PN 12345 Lot No. 2345, in the Town of Kuala Lumpur, District of Kuala Lumpur and State of Wilayah Persekutuan ('the said Property'). The lease on the said Property expires on 6th July, 2120 and contains a restriction-in interest that states "*Tanah ini tidak boleh dipindahmilik, dipajak, dicagar atau digadai tanpa kebenaran Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur*".

Ms. Money will sign the Sale and Purchase Agreement with HOHSB in the next 14 days and will pay the sum of RM150,000-00 to HOHSB as Deposit. Since this is her first time purchasing a housing property in Malaysia, Ms. Money intends to apply to Bank Kaya Bhd. ('BKB') for a loan to finance the purchase of the said Property. Finally, BKB has approved the loan sum amounting to RM900,000-00 only to Ms. Money Meanwhile, HOHSB has obtained a bridging loan of RM250,000-00 to the said Property.

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Ms. Money has appointed you as her solicitor in this sale and purchase together with loan transactions.

(i) Illustrate to Ms Money the relevant procedure to complete the sale;

(9 marks)

(ii) Demonstrate the procedure of handling loan transactions and the required documentation.

(14 marks)

(iii) Recently, HOHSB would like to amend the development plan of the abovesaid housing project and divide Phase 1 into Phase 1A and 1B. Analyse the impact of dividing Phase 1 into Phase 1A and 1B on the sale and purchase transaction of Ms. Money in Phase 2.

(2 marks)

(Total: 25 marks)

QUESTION 3

Mat Kilau ('the Purchaser') intends to purchase a single-storey house held under the title known as HS(D) 4123, Lot 567, Section 8, Pekan Semenyih, Daerah Ulu Langat, Negeri Selangor ('the Property') from Awang Kenit for the price of RM280,000-00. There were several encumbrances on the Property. A first charge was registered in favour of Bank Kaya Berhad ('BKB') registered vide Presentation No. 123/2013 on 20 March 2013. On 11 November 2015, a second charge was registered in vide Presentation No. 456/2015 in favour of Bank Kaya Raya Berhad ('BKRB'), and both charges were third-party charges to secure a loan granted to one Pasti Untung Enterprise (hereinafter referred to as 'the Borrower'). Messrs Azman Jaya & Partners was appointed as the Purchaser's Solicitor.

Mat Kilau requests you to act for him for his loan transaction. He obtained a loan from Bank Kaya Gila Berhad ('BKGB') to finance the payment of the balance of purchase price.

You are required to prepare:

(i) a draft letter of enquiry from BKGB's Solicitors to Purchaser's Solicitors.

(10 marks)

(ii) a draft a Letter of Undertaking from BKB and BKRB to BKGB.

(10 marks)

(iii) a quotation of legal fees and disbursement including the stamp duty for the said transaction.

(5 marks)

(Total: 25 marks)

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Answer EITHER Question 4 (a) OR Question 4 (b)
QUESTION 4 (a)

Juta Juta Sdn. Bhd. is a private limited company registered under the Companies Act 2016 ('the Purchaser') purchased from Tekad Berjaya Sdn Bhd ('the Developer') 2 units of single-storey houses under construction in a piece of land in the District of Alor Gajah, Mukim Lendu, Melaka known as Lot 123 & Lot 124, Taman Perumahan Lendu (the Properties). There is no restriction in interest nor encumbrances in the Properties. The Purchaser paid an earnest deposit of 3% to book the purchase. Ms Valerie, a 15 years of experience solicitor of Inn & Inn Chambers has been appointed by the Developer to represent them and the Purchaser was represented by the same solicitor. The Sale and Purchase Agreement was executed by the Directors of both parties on 22 January 2019 (the "SPA") and the purchase price of RM584,513.44.00 was paid in full. The vacant possession of the Properties were delivered on 21 January 2021.

In December 2022, Mr. Chan Sok Lai, one of the Directors of the Purchaser, discovered that one of the purported directors of the Developer who signed the SPA and the memorandum of transfers was one Lee Nyan Chong who was not a director of the Developer. He also claimed that even if he was, the Developer was being under members' voluntary liquidation, thus only the liquidator could execute any instrument to convey the Vendor's assets. Therefore, it is asserted that the SPA and the memorandum of transfers ("MOT"), by virtue of Section 340(2)(a) and (b) of the National Land Code 1965 (*superseded by the National Land Code Act 828 which carry similar provisions*) are void for insufficient instruments.

Under the SPA, it was expressly mentioned that the Developer was in 'Members Voluntary Liquidation' but the SPA was executed by the directors of the Vendor with a common seal affixed rather than by the liquidator. The same goes for the MOT. Furthermore, Mr Chan also found out that there are certain terms and conditions of the SPA have been varied, including the vacant possession clause. One of the variable terms was on the defect liability period that has been extended to 48 months instead of 24 months. Mr Chan immediately lodged a police report, and he came and sought your legal advice. He explained to you that the Purchaser has agreed to appoint Ms Valerie to represent them as Ms Valerie promised to give them 30% discount on legal fees.

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Based on the above facts, and in light with relevant provisions and case law:

(i) Explain to Mr Chan the liability of the Developer and the solicitors, Messrs Inn & Inn Chambers, if any;

(12 marks)

(ii) Access how Ms Valerie could have avoided the void transaction;

(5 marks)

(iii) Determine whether Mr Chan can claim the liquidated ascertained damages (LAD) as the Purchaser was silent upon the expiry of the due date for the delivery of vacant possession in January 2021; and

(6 marks)

(iv) Evaluate Mr Chan's eligibility to obtain the refund of the stamp duty that has been paid.

(2 marks)

(Total: 25 marks)

OR

QUESTION 4 (b)

Kiki ('the Purchaser') purchased one unit of 3 bedrooms condominium at a development known as Skypark Vistana Condominium in Cyberjaya ('the project') from the developer ABC Construction Sdn. Bhd. ('the Developer') with the purchase price of RM1,450,000-00. The Purchaser paid the booking fee of RM5,000-00 on 30 December 2015 and both parties had entered into a sale and purchase agreement dated 20 January 2016 ('the SPA'). Sub-paragraph 25(2) of Schedule H provided that the Developer shall be liable to pay the purchasers liquidated ascertained damages ('LAD') if it fails to deliver vacant possession within 36 months. Messrs Hong, Ahmad & Kunalan (the Purchaser's solicitors) represented the Purchaser, and the Developer was not represented.

In 2019, the Developer informed the Purchaser's solicitors that they have applied to the Controller of Housing ('Controller') for an extension of time for the delivery of vacant possession of the units to the purchaser, pursuant to reg. 11(3) of the Regulation, but the application was rejected ('the Controller's decision'). The Developer then appealed against the Controller's decision, to the Minister of Urban Wellbeing, Housing and Local Government ('Ministry'), pursuant to reg. 12 of the Regulations. The Minister allowed the appeal and granted an extension of 12 months ('Minister's decision'), giving the Developer 48 months to deliver vacant possession of the unit to the Purchaser, instead of the statutorily prescribed period of 36 months.

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In addition to that, the Developer also claimed that by virtue of clause 32 (Force Majeure Event's Clause) in the SPA, the Developer has the right to another 2 years of extension of time and therefore is exempted from non-fulfilment of any terms caused by circumstances beyond their control due to Covid-19 Pandemic under Section 35(1) of the Temporary Measures for Reducing the Impact of Coronavirus Disease Act 2019.

The Purchaser is very upset with the delay which has caused her a great deal of expense resulting in dysthymia. She has also been told by her lawyer friend that she is supposed to sign a sale agreement under Schedule H instead of Schedule G. Explain to the Purchaser on the liabilities of the solicitors in this transaction.

(Total: 25 marks)

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